



# The Attorney General of Texas

August 29, 1978

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Honorable James Warren Smith, Jr.  
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Letter Advisory No. 151

Re: "Continuous" employment  
of a teacher's aide within the  
meaning of the nepotism laws.

Dear Mr. Smith:

You advise that a teacher's aide at the Dilley Independent School District began her employment in 1969. On April 14, 1977, the Board of School Trustees of the Dilley Independent School District expressly refused to renew this individual's employment for the 1977-78 school year. We are advised that the effect and intent of the Board was that the individual no longer be employed at the end of the contract term. The teacher's aide continued working until the end of the 1976-77 school year on May 28, 1977. At a subsequent meeting, on June 16, 1977, the Board of School Trustees re-hired the teacher's aide for the 1977-78 school year, to commence August 24, 1977. On April 1, 1978, the teacher's aide's husband was elected to the Board of School Trustees of the Dilley Independent School District. You ask several questions concerning the applicability of V.T.C.S. article 5996a, the nepotism statute, to these facts, and to teacher contracts in general.

Article 5996a provides, inter alia, that no

officer of . . . any . . . school district . . . shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, . . . when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds . . . provided, that nothing herein contained . . . shall prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship,

employment or duty for a period of two (2) years prior to the election or appointment of the officer or member appointing. . . .

V.T.C.S. art. 5996a (emphasis added). Unless the teacher's aide comes within the two year exception, as contained in the underlined language, her re-hiring for the 1978-79 school year is prohibited. As recognized in Attorney General Opinion V-1142 (1951), the two year exception is

not intended to apply to a person not employed at the time the related official takes office and for two years immediately prior thereto.

The resolution of your questions necessarily turns on the definition of the word "employed" as used in the nepotism statute. In this regard, we note that the Missouri Court of Appeals stated:

Continuously in . . . employ does not mean continuously in . . . service. To be employed in anything means not only the act of doing it, but also to be engaged to do it, or to be under contract or orders to do it.

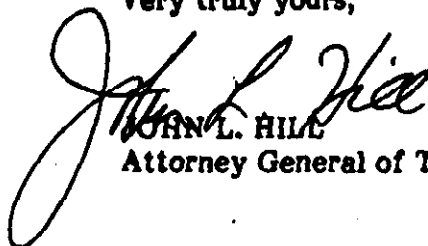
Cox v. Brown, 50 S.W.2d 763, 764 (Mo. App. 1932). See Rose v. Clutter, 271 S.W. 890, 891 (Tex. 1925) ("employed" has the same meaning as the word "hired"); see also United States v. Morris, 39 U.S. (14 Pet.) 464, 475 (1840); In re Cormicks Estate, 160 N.W. 989, 990 (Neb. 1916); Attorney General Opinion H-105 (1973). Accordingly, we believe that a school district employee who is between terms but has had his contract renewed for the succeeding school year is employed within the meaning of the nepotism statute.

We believe it is clear that the teacher's aide in question does not fall within the two-year exception in the nepotism statute. Between May 28, 1977, when her duties as a teacher ended for the 1976-77 school year, and June 16, 1977, when she was re-hired for the 1977-78 school year, the teacher's aide was neither under contract to work in the future, nor then working. This period constituted a break in her "employed" status and consequently made her ineligible for the two-year exception in the nepotism statute.

#### S U M M A R Y

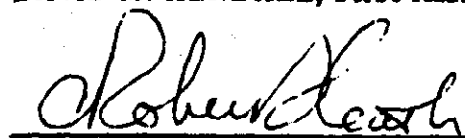
The express refusal to re-hire a teacher's aide before her current term of employment ended constitutes a break in employment for purposes of the nepotism statute.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
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C. ROBERT HEATH, Chairman  
Opinion Committee

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